

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

STAUFFER MANAGEMENT COMPANY)

LLC AND BAYER CROPSCIENCE INC.)

Defendants.)

Civil Action No. _____

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for injunctive relief and recovery of costs under Sections 106(a) and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606(a) and 9607. The United States seeks injunctive relief to remedy conditions in connection with the release or threatened release of hazardous substances into the environment at the Stauffer Chemical Superfund Site ("Site") in Tarpon Springs, Pinellas County, Florida. The United States also seeks to recover unreimbursed costs incurred, and to be incurred, for response activities at the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action, and the Defendants, pursuant to Sections 106(a), 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a) and 9613(b), and under 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this District under Sections 106(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a) and 9613(b), and 28 U.S.C. § 1391(b) and (c), because the claims arose, and the threatened and actual releases of hazardous substances occurred, within this judicial district.

DEFENDANTS

4. Defendant, Stauffer Management Company LLC (“Stauffer Management”) is a corporation organized and incorporated under the laws of the State of Delaware, and authorized to do business in the State of Florida.

5. Stauffer Management is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

6. Defendant, Bayer CropScience Inc. (“Bayer CropScience”) is a corporation organized and incorporated under the laws of the State of New York, and authorized to do business in the State of Florida.

7. Bayer CropScience Inc. is a “person,” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

GENERAL ALLEGATIONS

8. The Site comprises approximately 130 acres and is located on Anclote Road, along the Anclote River on the Pinellas/Pasco County border in Tarpon Springs, Florida.

9. The Site is an inactive elemental phosphorus facility. From 1960 until 1981, Stauffer Chemical Company owned and operated the Site, which produced elemental phosphorus using phosphate ore.

10. Stauffer Management is the corporate successor to Atkemix Thirty-Seven Inc., which acquired title to the Site in 1987. Stauffer Management is the current owner of the Site within the meaning of Section 107(a) (1) of CERCLA, 42 U.S.C. § 9607 (a) (1).

11. Bayer CropScience is the corporate successor to Stauffer Chemical Company. Stauffer Chemical was an owner and operator of the Site at the time of disposal of hazardous substances within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

12. A by-product of the production process at the Site was liquid phosphorous. The majority of the phosphorus was recovered through filtration, but a phosphorus containing sludge was left behind. Final process wastes, including phosphorus wastes, were disposed of on-site in various unlined waste ponds. Other on-site disposal activities included the dumping of furnace phosphate consisting of twenty percent elemental phosphorus. Over 500,000 tons of chemical process wastes were disposed of on-site between 1960 and 1979.

13. The Site was listed on the National Priorities List ("NPL") on May 31, 1994.

14. On July 28, 1992, Atkemix entered into an Administrative Order of Consent for the purpose of conducting a Remedial Investigation and Feasibility Study. The Feasibility Study Report was finalized in March 1996. The Remedial Investigation concluded that heavy metals such as arsenic, radium, and phosphorus were the major contaminants of concern. The Remedial Investigation further concluded that soils and groundwater at the Site were contaminated.

15. Arsenic, radium, and phosphorus are hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9607(14).

16. On July 2, 1998, EPA issued a Record of Decision ("ROD") for the Site, selecting the remedy to address soil and sediment contamination. This phase of the cleanup has been designated Operable Unit Number One ("OU #1"). The ROD is consistent with CERCLA and the National Contingency Plan, 40 C.F.R. Part 300.

17. There were and are "releases" within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601 (22), as well as the threat of continuing releases of hazardous substances, into the environment at and from the Site.

18. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601.

FIRST CLAIM FOR RELIEF

19. Paragraphs 1-18 are realleged and incorporated herein by reference.

20. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides in pertinent part:

In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

21. By Executive Order 12580 of January 23, 1987, the President's functions under 106(a) of CERCLA, 42 U.S.C. 9606(a), have been delegated to the Administrator of EPA.

22. EPA has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of actual or threatened releases of hazardous substances from the Site.

23. The Defendants are liable for the injunctive relief to which the United States is entitled at the Site under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

SECOND CLAIM FOR RELIEF

24. Paragraphs 1-18 are realleged and incorporated herein by reference.

25. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

(1) the owner and operator of a vessel or a facility, [and]

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, . . .

shall be liable for –

(A) all costs of removal or remedial action incurred by the United States Government ... not inconsistent with the national contingency plan

26. The United States has incurred and will continue to incur costs of removal and remedial actions not inconsistent with the National Contingency Plan to respond to the release or threatened release of hazardous substances at and from the Site, within the meaning of Sections 101(23), (24), and (25) of CERCLA, 42 U.S.C. §§ 9601(23), (24), and (25).

27. The Defendants are liable, as the current owner or operator of the Site, or as the former owner or operator at the time of disposal of hazardous substances, to the United States for all response costs, including the costs of removal and remedial actions, incurred in the past and to be incurred in the future by the United States with respect to the Site, plus interest on the response costs, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court:

1. Order Stauffer Management and Bayer CropScience to abate the threat posed by the release or threatened release of hazardous substances by performing the remedy selected by EPA in the ROD.
2. Award the United States a judgment against Stauffer Management and Bayer CropScience for all costs incurred by the United States in connection with the Site, plus interest;
3. Award the United States a declaratory judgment, pursuant to CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2), that Stauffer Management and Bayer CropScience are liable for all future costs incurred by the United States in connection with the Site.

Dated: _____

KELLY A. JOHNSON
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20044

THOMAS P. CARROLL
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
Post Office Box 7611
Washington, D.C. 20044-7611
(202) 514-4051

PAUL IGNATIUS PEREZ
United States Attorney

By:

Charles T. Harden III
Assistant United States Attorney
Florida Bar No. 97934
400 North Tampa Street
Suite 3200
Tampa, Florida 33602
Tel: (813) 274-6316
Fax: (813) 274-6198

OF COUNSEL:

Rudolph Tanasijevich
Assistant Regional Counsel
Environmental Protection Agency
Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960